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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Self-Certification of VALOR)
Telecommunications of New Mexico, LLC,)
and VALOR Telecommunications of Texas,)
LP, as a Rural Telephone Company)
)
Federal-State Joint Board on Universal)
Service)

DA No. 00-1882

CC Docket No. 96-262

**Ex Parte Comments of the
Rural Utilities Service**

Original and One Copy filed with:
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

The Rural Utilities Service (RUS, the Agency), a rural development agency of the United States Department of Agriculture, actively supports and promotes the universal availability of a broad range of telecommunications and information services in rural America. The Agency offers financing, typically at the government's cost of money, and technical assistance, to help rural local exchange carriers (LECs) provide state-of-the-art telecommunications services. Carriers financed by RUS agree to provide universal service and build plant that is advanced services capable.¹ It should be noted that RUS operates under a statutory definition of "rural" and can lend to carriers meeting that definition regardless of whether they are "rural telephone companies" under the 1996 Act.²

1. Universal service is required by the Rural Electrification Act at 7 U.S.C. 922: "The Administrator in making such loans shall, insofar as possible, obtain assurance that the telephone service to be furnished or improved thereby will be made available to the widest practical number of rural users." This language was in the 1949 Telephone Amendment. Advanced services capability was added to the Rural Electrification Act in 1993 and is found at 7 U.S.C. 935(d).

2. See 7 U.S.C. 924(b): "As used in this title, the term 'rural area' shall be deemed to mean any area of the United States not included within the boundaries of any incorporated or unincorporated city, village, or borough having a population in excess of 5000 inhabitants."

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Since the passage of the Telecommunications Act of 1996 (1996 Act), RUS has taken an active role in the Federal Communications Commission's (FCC's) implementation of the 1996 Act's universal service provisions. Throughout this process, RUS has represented the needs and interests of all rural Americans, not just those served by RUS-financed companies and cooperatives. Likewise, in its written comments, RUS has focused on what is good for rural America, not just what is good for the entities to which it lends.³

This filing supports the self-certification of Valor Telecommunications of Texas LP (Valor) as a rural telephone company because issues surrounding this matter are important to the telecommunications service future of many rural customers whether or not they specifically apply to the case of Valor.

The Definition of Rural Telephone Company Can Be Interpreted To Include New Entities Specializing in Serving Rural Areas

RUS is filing these comments because rural America needs the possibility of new telephone companies that focus primarily on serving and investing in rural areas. Under FCC rules, a new company meeting one or more of the four parts of the definition of "rural telephone company" in the 1996 Act ("Definition 37") should have its self-certification accepted by the FCC.⁴ The fact that a carrier did not exist on the date of enactment of the 1996 Act should not preclude it or its customers from receiving either the benefits of rural protections or universal service support available to older rural telephone companies. The prepositional phrase "on the date of enactment of the Telecommunications Act of 1996," even if applied to the whole of section (D) in Definition 37, can be read to determine eligibility as if the LEC had been in existence on that date.

The narrowest reading of Definition 37 would serve little constructive purpose except to introduce impediments to rural-focused carriers. If this section is read to mean that the LEC had to be in business on the date of enactment of the 1996 Act to qualify for rural market treatment and/or universal service eligibility, then any new LEC can simply configure itself to meet Definition 37 under sections (A), (B), or (C). For example, a company could be of any size and qualify under section (A) if it avoided all areas over 10,000 in population. Similarly, a company could serve areas over 10,000 if it limited its overall size and qualify under either Sections (B) or (C). The phrase "on the date of enactment of the Telecommunications Act of 1996" does not apply to these sections. RUS believes Congress intended this four-part definition to identify truly rural carriers. Therefore, it can be presumed that Section (D) was intended to blend the attributes of (A), (B) and (C). That is to say, a carrier can be large and serve some urban areas as long as it is overwhelmingly rural.

3. See www.usda.gov/rus/telecom/telecomact/act.htm.

4. See 47 U.S.C. 153(37)(A-D).

Designating New Rural Telephone Companies is Critical to Rural America and is Consistent with Intent of Congress

Congress wrote Definition 37 to draw a line between companies that have a significant proportion of subscribers with urban telecommunications characteristics and those that do not. The law drew this line for the purpose of rural market protections such as §253(f) and §214(e)(5). Urban characteristics, such as low plant investment and low costs per line and a higher percentage of true business lines, are financially favorable to LECs. Rural characteristics such as high per-line costs and low business-to-total-lines ratios financially burden carriers.⁵ In writing Definition 37, Congress established the threshold of this rural-urban mix, knowing that carriers operating below this threshold should be treated differently by regulators. It is not reasonable to assert that Congress believed new, rural-focussed carriers needing this special care could not be created after the 1996 Act went into effect.

RUS is familiar with the rural exchanges served by Valor because companies financed by our predecessor agency, the Rural Electrification Administration (REA), once served many of these exchanges. RUS is restricted by statute to financing only the most rural areas of the nation. From 1949 until changed in 1993, the statutory definition of rural area excluded communities above 1,500. After the change, the definition was increased to exclude communities over 5,000. Almost all of Valor's exchanges could clearly be financed by RUS today under the current statutory definition. Using mid-1998 Census population estimates, RUS could finance 184 of Valor's 197 exchanges. Even using the earlier definition (*i.e.*, 1,500), RUS could finance 112 of Valor's exchanges. Most communities served by Valor are either growing insignificantly or are losing population, which is typical of rural communities in Texas. This examination shows that Valor's collection of exchanges is overwhelmingly rural in nature.

Under the 1996 Act, states are under no obligation to develop an intrastate universal service support mechanism. While we recognize that Texas is working on its intrastate mechanism, the details are not yet complete. Imagine the future if Texas had decided against providing intrastate support as some states may. Without the adequate federal universal service support that rural telephone company certification can bring, educational opportunities in Uncertain, Texas, (population 199, up two from last year) would be just that. It will take modern infrastructure to keep children happy while exploring the Internet in Happy, Texas (population 597, reduced by one in the last year). The decision facing the FCC has implications far beyond the boundaries of towns like Kennard, Texas (population 342, steady over the last year).

The FCC's decisions regarding support for non-rural LECs leaves most states that previously received non-rural support out of the federal mechanism. The support recommendations for rural LECs recently issued by the Rural Task Force would provide adequate support for rural customers. This huge disparity in federal support adequacy, which would be magnified in states which choose not to establish an intrastate mechanism, would limit Valor's (or any other similarly situated company's) ability to invest and modernize service unless it is a rural telephone company. Unlike the truly non-rural carriers, which have many low cost urban areas to support their high

5. See *The Rural Difference*, Rural Task Force White Paper 2, January 2000.

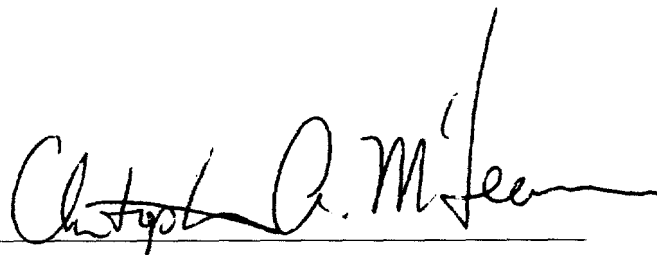
cost areas, a company like Valor will have to find the money from local and intrastate revenues, which are quite limited in truly rural areas. The dual system of universal service support chosen by the FCC almost compels a generous reading of Definition 37(D) to give meaning to Congress' clear mandate for "specific, predictable and sufficient" universal service support. Providing adequate support also removes a significant barrier to infrastructure investment so that advanced telecommunications capability can be deployed to all Americans as Congress envisioned under both Sections 254 and 706.

The Real Question: Can New LECs Come to the Rescue of Rural America?

If Valor had existed with today's combination of exchanges on the date of enactment of the Telecommunications Act of 1996, there would be no argument about Definition 37. The real issue before the FCC is whether new entities can evolve in this competitive local service environment to specialize in serving rural exchanges. If the FCC answers "no" to that question, it is essentially ordering the preservation of telecommunications service ghettos due to Paragraph 308 of the May 8, 1997, First Report and Order on Universal Service. The FCC should provide a strategy to let high cost exchanges, such as the ones gathered by Valor, migrate to adequate universal service support and reasonable rural protections facilitated by classification as a rural telephone company. Without a means to deliver modern service to rural Texas, the customers in Detroit, Memphis, and Miami, Texas (populations 691, 2264, and 619, respectively) will lose a chance to succeed in the information age.

Conclusion

RUS recommends that the FCC accept Valor's (and any other similarly situated carrier's) certification as a rural telephone company under Definition 37, paragraph (D). This is a valid reading of the 1996 Act that promotes the investment that rural America needs and is consistent with the Act's mandate to "preserve and advance" universal service.



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Date

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